9 **S.B. CIVIL MISC. APPEAL NO.968/2007.**

Meenakshi & Ors. Vs. Babu Khan & Ors.

Date of Order :: 27th February 2007.

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. S.K. Sankhla, for the appellants.

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BY THE COURT:

For awarding compensation to the wife, two minor children and parents of about 25 years old vehicular accident victim Dilip Kumar, the Tribunal has noticed the assertion of the claimants that the deceased was earning as a transporter and as a driver of heavy transport vehicle; and that the deceased was registered owner of the truck bearing registration No. RJ 19 1G 6245 and was transporting fodder wherefrom he was earning Rs.1,50,000/- per annum after deduction of all expenditure. The Tribunal has, inter alia: (i) disbelieved the assertion of the claimants about the deceased being a driver of heavy transport vehicle for want of relevant proof, i.e. his driving licence; (ii) noticed that the wife of the deceased stated her being not aware about the exact income of her husband and that the facts were known to her father-in-law only; and on the other hand, father of the deceased, Sanga Ram AW-3 stated that he was not aware about the income and expenditure of the deceased; and has found both the witnesses contradicting each other and making baseless statements; (iii) also noticed that the said truck bearing

registration No. RJ 19 1G 6245 was of the make of the year 1983 and was transferred in the name of the deceased only on 03.12.2004, about five months before the date of incident and has observed that there was no reasonable basis to estimate income of the deceased at Rs.1,50,000/- from a 22 years old truck purchased only five months before the date of incident; and (iv) observed that the documents Exhibits 22 to 61 do not establish the income of the deceased.

In the circumstances of the case, the Tribunal has put an estimate on the income of the deceased at Rs.60,000/- per annum (i.e. Rs.5,000/- per month) and deducting one-third wherefrom, has taken loss of dependency at Rs.40,000/- per annum and has capitalised with application of multiplier of 17 to assess pecuniary loss at Rs.6,80,000/-. Allowing Rs.2,000/- towards funeral expenses, Rs.10,000/- to the wife of the deceased towards loss of consortium and Rs.5,000/- each to the other claimants towards non-pecuniary loss, and further Rs.2,000/- towards transportation, the Tribunal has awarded compensation in the sum of Rs.7,14,000/- and has also awarded interest @ 6% per annum from the date of filing of the claim application. The claimants feel aggrieved of the award aforesaid as being low and insufficient.

Learned counsel Mr. S.K. Sankhla appearing for the claimant-appellants seeking enhancement has strenuously

contended with reference to the documents Exhibits 22 to 61 produced on record that in view of substantial amount of fodder transported by the deceased, even on a conservative estimate the assertion of income of the deceased at Rs.1,50,000/- per annum could not have been disbelieved. The submissions are not well founded and cannot be accepted.

As noticed above, the wife and father of the deceased have chosen to avoid stating complete particulars about the income and expenditure accounts of the deceased. The considerations adopted by the Tribunal in not accepting income of the deceased at Rs.1,50,000/- per annum from a 22 years old truck purchased only five months before the date of incident cannot be said to be suffering from any error of reasonable appreciation of the material available on record. Even if the documents Exhibits 22 to 61 show some work of transportation, they are not in proof of the net income of the deceased. Nevertheless, the Tribunal has proceeded to put an estimate rather on the higher side taking monthly income of the deceased at Rs.5,000/- per month and has applied maximum side multiplier of 17. It is noteworthy that if the deceased were earning as a transporter from the said truck, by the very nature of the source of income, a part of the income retains itself to the claimants. The multiplicand taken by the Tribunal at Rs. 40,000/- per annum cannot be said to be standing on the lower side from

any standard. The Tribunal has not restricted on awarding reasonable amount of compensation on any other score either.

On the facts and in the circumstances of the case, the award of compensation as made by the Tribunal in the sum of Rs.7,14,000/- could only be said to be rather on the higher side and rules out any scope for enhancement.

The appeal fails and is, therefore, dismissed summarily.

(DINESH MAHESHWARI), J.

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